

SERVICE DATE – JUNE 27, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36261

BALLARD TERMINAL RAILROAD COMPANY, L.L.C.—
PETITION FOR DECLARATORY ORDER

Digest:¹ The Board holds this docket in abeyance pending the outcome of a related state court proceeding and orders periodic status reports.

Decided: June 25, 2019

On December 12, 2018, Ballard Terminal Railroad Company, L.L.C. (BTRC), petitioned the Board for a declaratory order holding that the City of Seattle (City) is prohibited under 49 U.S.C. § 10501(b) from proceeding with trail construction that would “remov[e] or reconfigur[e] track actively used by [BTRC],” “relocat[e] an active drive-lane of a City street so that it is directly on top of an active rail line,” or “mak[e] roadway improvements adjacent to the active rail line.” (Pet. 3.)

The City replied on January 28, 2019,² arguing that BTRC’s claims actually reflect a dispute over the implementation of a September 14, 1997 Operating Agreement (Operating Agreement) between BTRC and the City. (City Reply 2.) The City argues that, in the Operating Agreement, BTRC agreed to the activities that it now opposes, and that the Board should therefore dismiss BTRC’s petition—or alternatively, hold this matter in abeyance—and allow resolution of the parties’ contract dispute in a related state court proceeding. (See id. at 3-4, 27.) The City also argues that, in the event the Board nevertheless reaches the merits of BTRC’s petition, it should deny the petition because the proposed trail construction would not interfere with railroad operations. (See id. at 4.)

As discussed below, analysis of BTRC’s preemption claims—by the court or by the Board—would benefit from resolution of the parties’ contract dispute. Accordingly, the Board

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² See Ballard Terminal R.R.—Pet. for Declaratory Order, FD 36261 (STB served Jan. 30, 2019) (explaining reply deadline was tolled during the partial shutdown of the Federal government).

will hold the docket in abeyance pending resolution of the related state court proceeding and order periodic status reports.

BACKGROUND

The rail line at issue in this docket is a 1.4-mile portion of the Ballard Line, which extends between milepost 0.09 and the end of the line at milepost 2.70, a distance of approximately 2.6 miles, in the Ballard District of Seattle, King County, Wash. (Pet. 3, 8.) By the late 1990s, the Ballard Line had been embargoed by its then-owner, Burlington Northern and Santa Fe Railway Company (BNSF). See Sea Lion R.R.—Aban. Exemption—in King Cty., Wash., AB 544X et al., slip op. at 4 (STB served Aug. 11, 1998). Around this time, BNSF, the City, and other interested parties agreed upon a plan to address certain of their goals regarding the Ballard Line: BNSF wanted to shed an unprofitable, low-traffic line; shippers on the line wanted to preserve their rail service; and the City wanted to develop the final portions of its 20-mile trail, including a small gap in the middle where the Ballard Line is located. See id. at 2; (City Reply 7).

Per their plan, those parties agreed that “BTRC [would] continue to provide freight rail service over a portion of the corridor while, at the same time, [the City] builds and maintains a parallel trail on a portion of the corridor.” Sea Lion R.R., AB 544X, slip op. at 3. Under the plan, the nonprofit corporation Adventure Trail, Inc., doing business as Sea Lion Railroad (Sea Lion), would acquire the Ballard Line as “interim custodian,” secure an operator, coordinate a transfer of assets, and assist in developing a rail-to-trail project. Id. at 1, 3.

Pursuant to the plan, BNSF sold the Ballard Line to Sea Lion in 1997, and two shippers formed BTRC to become the new operator on it. Id. at 3. Sea Lion contracted with BTRC to provide service on the line, supplied BTRC with start-up funds, and helped BTRC to secure a loan. Id. BTRC engaged a contractor to rehabilitate the Ballard Line in early 1998 and thereafter began providing service. Id.

In August of 1998, Sea Lion obtained Board authority to abandon the Ballard Line. Id. at 8.³ Thereafter, Sea Lion transferred the track and related assets to BTRC and transferred the real estate to the City under Common Carrier Status of States, State Agencies & Instrumentalities, & Political Subdivisions, 363 I.C.C. 132 (1980).⁴ (See City Notice, Jan. 5,

³ Sea Lion filed a notice of consummation in Docket No. AB 544X on January 19, 1999.

⁴ “The intent of Common Carrier Status of States is to encourage governmental entities to maintain local rail service on lines that would otherwise be abandoned by exempting those entities or their operators from Board regulation.” City of Fishers—Pet. for Partial Revocation of Exemption, FD 36137 et al., slip op. at 9 (STB served Dec. 21, 2018).

1999, Sea Lion R.R., AB 544X.) Sea Lion assigned the Operating Agreement between it and BTRC to the City, see Sea Lion R.R., AB 544X, slip op. at 3, and BTRC filed with the Board a notice to operate the Ballard Line under a modified certificate of public convenience and necessity, see Ballard Terminal R.R.—Modified Rail Certificate, FD 33594 (STB served Feb. 26, 1999).

Some 20 years later, the City has not constructed the remainder of the trail. A 1.4-mile gap remains, which the parties refer to as the Missing Link. BTRC states that it filed its petition because the City’s designs for the Missing Link are now at least 90% complete and the City intends to begin construction of the Missing Link in early 2019. (Pet. 8-9.) Therefore, BTRC states, “the location and impacts of the Missing Link to BTRC are known and subject to Board review.” (Pet. 9.) Among other things, BTRC argues that the Operating Agreement establishes an agreed-upon location for the Missing Link, following 11th Avenue NW, to NW Leary Way, to Leary Avenue NW, to NW Market Street—two blocks away from the corridor used by BTRC’s line. (See id. at 10-11.) The City’s proposal, by contrast, would build the trail in a different location, from NW 45th Street, to Shilshole Avenue, to NW Market Street—the same route used by BTRC’s line. (See id. at 14-15.)

BTRC argues that the City’s planned configuration would unreasonably and materially impede BTRC’s ability to operate its railroad and will create unsafe conditions for doing so, because, it would among other things place the trail between BTRC’s main line and its Western Pioneer Spur, relocate some of BTRC’s track into a vehicle travel lane on NW 45th Street, and pave an area next to BTRC’s line on “Not-54th Street.” (Pet. 24, 30, 34-36.)

The City asserts that the reference on its website to “early 2019” addresses a different part of the project, which is not the subject of BTRC’s petition. (City Reply 22-23.) According to the City, the construction that is the subject of BTRC’s petition was predicted to begin “in the third quarter of 2019 at the earliest,” but that was before a state court remanded the City’s environmental impact statement for additional analysis. (See id.) Disagreeing with BTRC’s interpretation of the contract, the City argues that the Operating Agreement permits it to construct the Missing Link on NW 45th Street and Shilshole Avenue. (See id. at 13-14.) The City states that, on January 17, 2019, it filed a civil complaint against BTRC in King County Superior Court to interpret and enforce the Operating Agreement. (See id. at 3 & Ex. 2.) According to the City, the parties’ dispute is a contractual one, and the City therefore asks the Board to dismiss BTRC’s petition (without prejudice to re-filing later, if appropriate), or alternatively hold this matter in abeyance to allow the state court to adjudicate the City’s complaint. (Id. at 24-27.)

The City argues that, if the Board instead reaches the merits, it should conclude that the planned trail would not prevent or interfere with BTRC’s continued rail operations. (Id. at 27.) Specifically, the City asserts that BTRC agreed to contractual terms permitting the types of

configurations that BTRC now opposes, which is evidence that “those terms would permit it to carry out its railroad operations without interference.” (See id. at 5 & n.7, 29.) The City also argues that its plans would provide the minimum clearance required under Washington State law between the rail line and the trail; that BTRC’s current operations already include the types of operating conditions that would result from the City’s plans; and that the City’s plans are not final, meaning that features BTRC raises in its petition are subject to change (and already have changed, in at least one instance). (See id. at 21, 30-38.)

DISCUSSION AND CONCLUSIONS

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to eliminate controversy or remove uncertainty. See Bos. & Me. Corp. v. Town of Ayer, 330 F.3d 12, 14 n.2 (1st Cir. 2003); Intercity Transp. Co. v. United States, 737 F.2d 103 (D.C. Cir. 1984); Delegation of Auth.—Declaratory Order Proceedings, 5 I.C.C.2d 675 (1989). For the reasons explained below, the Board will decline to exercise its discretionary authority to issue a declaratory order at this time and, instead, will hold this docket in abeyance.

BTRC seeks a declaration from the Board that certain actions by the City are preempted by 49 U.S.C. § 10501(b). However, as BTRC seems to acknowledge, resolution of the parties’ dispute appears to center around an interpretation of the Operating Agreement, at least in the first instance. (See Pet. 10-11, 13-14.) As the Board has repeatedly explained, a court is typically the more appropriate forum for interpreting an operating agreement or other contract. See, e.g., Gen. Ry. Corp.—Exemption for Acquis. of R.R. Line—in Osceola & Dickinson Cts., Iowa, FD 34867, slip op. at 4 (STB served June 15, 2007); Twp. of Woodbridge v. Consol. Rail Corp. (Woodbridge I), NOR 42053, slip op. at 5 (STB served Dec. 1, 2000) (concluding that it would not be appropriate for the Board to “rule on the merits of the contract dispute[],” as “[s]uch matters are best addressed by the courts”); Kan. City S. Ry.—Adverse Discontinuance Application—a Line of Ark. & Mo. R.R., AB 103 (Sub-No. 14), slip op. at 7 (STB served Mar. 26, 1999) (reiterating that “the Board will not undertake to interpret or enforce operating agreements or contracts”). Here, the parties are currently litigating the contract interpretation issue in King County Superior Court. The City has asked that BTRC’s petition for declaratory order be dismissed, or alternatively, held in abeyance. The Board finds that holding this docket in abeyance is the more appropriate course.

In deciding whether to hold a docket in abeyance, the Board considers whether abeyance would promote efficiency and whether it would be fundamentally unfair to any party. E.g., N. Am. Freight Car Ass’n v. Union Pac. R.R., NOR 42144 et al., slip op. at 3 (STB served Mar. 31, 2017). The Board has broad discretion to determine whether to take such procedural actions, and its decision to do so in any particular situation is highly dependent on the facts and circumstances of the case. Id.

Abeyance would promote efficiency here because a resolution of the parties' contract dispute by the state court would possibly moot or, at the very least, help to inform the preemption analysis, whether that analysis ultimately is performed by the court or the Board. For instance, if BTRC prevails in the contract dispute, it appears that the trail could not be constructed along the City's proposed Shilshole Avenue-NW 45th Street route, suggesting that the preemption question may never arise. (See Pet. 10-11.) Moreover, and potentially distinct from the contract dispute, the City's proposed configuration is not finalized, due to continuing environmental litigation and planning processes. (See City Reply 21, 23, 35.) Knowing more specifically what the City proposes to do—as well as whether and to what extent the state court may require that BTRC “relocate its track in order to accommodate trail construction” pursuant to the Operating Agreement (Pet., App. F § 10(e))—could also be significant in assessing any alleged interference with rail operations.

Abeyance would not be fundamentally unfair to any party here because obtaining answers to the contractual questions will allow a more complete and accurate adjudication of the preemption dispute between the parties. Accordingly, the Board will hold this docket in abeyance pending a decision from the state court resolving the City's contract action. Issues involving federal preemption can be decided either by the Board or the courts in the first instance. E.g., Adrian & Blissfield R.R.—Pet. for Declaratory Order, FD 36148, slip op. at 4 (STB served Jan. 31, 2018). It is possible, therefore, that the court will address preemption after it resolves the contract dispute. To ensure that it remains informed regarding the progress of the state court litigation, the Board will direct the parties to submit status reports (jointly, if possible, or separately) every six months, beginning six months after the service date of this decision, and to submit any merits decision by the court within 15 days of its issuance.

For the reasons stated above, the docket will be held in abeyance.

It is ordered:

1. The docket is held in abeyance.
2. The parties are directed to submit status reports (jointly, if possible, or separately) every six months, starting on December 27, 2019, describing the status of the state court litigation and to submit any merits decision by the court within 15 days of its issuance.
3. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, and Oberman.